

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 2/26/2013	(3) CONTACT/PHONE Terry Wahler, Senior Planner/ (805) 781-5621	
(4) SUBJECT Hearing to consider an appeal by Hilda C. Leslie and Curtis Leslie of the Planning Commission's approval of Development Plan/Coastal Development Permit DRC2011-00043, a request by Tim Winsor to amend and remove property that is located in the Agriculture Land Use Category east of Red Mountain Road, north of the community of Cambria, from the conditions of a previous Development Plan (D870020D). District 2.			
(5) RECOMMENDED ACTION That the Board of Supervisors adopt and instruct the Chairperson to sign the resolution denying the appeal and affirming the decision of the Planning Commission to approve Development Plan/Coastal Development Permit DRC2011-00043 based on the findings listed in Exhibit A and conditions listed in Exhibit B.			
(6) FUNDING SOURCE(S) Appeal Fee	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> Hearing (Time Est. 1 hour) <input type="checkbox"/> Board Business (Time Est. _____)			
(11) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP Attached	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A Date _____	
(17) ADMINISTRATIVE OFFICE REVIEW Reviewed by Leslie Brown			
(18) SUPERVISOR DISTRICT(S) District 2 -			

County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / Terry Wahler, Senior Planner

DATE: 2/26/2013

SUBJECT: Hearing to consider an appeal by Hilda C. Leslie and Curtis Leslie of the Planning Commission's approval of Development Plan/Coastal Development Permit DRC2011-00043, a request by Tim Winsor to amend and remove property that is located in the Agriculture Land Use Category east of Red Mountain Road, north of the community of Cambria, from the conditions of a previous Development Plan (D870020D). District 2..

RECOMMENDATION

Adopt and instruct the Chairperson to sign the resolution denying the appeal and affirming the decision of the Planning Commission and approve Development Plan/Coastal Development Permit DRC2011-00043 based on the findings listed in Exhibit A and conditions listed in Exhibit B.

DISCUSSION

On July 26, 2012, the Planning Commission approved the Development Plan/Coastal Development Permit, effectively removing the subject property belonging to Tim Winsor from the requirements of the original Development Plan D870020D. Neighbors Hilda C. Leslie and Curtis Leslie, appealed the Planning Commission's decision on August 9, 2012. The appeal is discussed below after the sections explaining the original Cambria Ranch Road project and the current development plan request.

Original Project History

In 1981, the land owner at that time, Cambria Ranch Incorporated, received Certificates of Compliance for eleven lots on the Phelan Ranch property. The Cambria Ranch Road Association (CRRA) was created to maintain the roads within the Ranch. The goal of Cambria Ranch's landowner was to sell the parcels within the Ranch to individual landowners.

In order to improve the ranch road so that it met the county's rural residential access standards, the owner of Cambria Ranch applied for and obtained approval of a Development Plan/Coastal Development Permit (D870020D). A grading permit was then applied for and issued, and the road work was completed subject to the Development Plan's Conditions of Approval.

The Development Plan conditions required that a property owners association be formed to administer the Covenants, Conditions and Restrictions (CC&Rs) and implement the mitigation measures from the Final Environmental Impact Report. Cambria Ranch Incorporated elected to create a second association, San Luis Obispo County Cambria Ranch Owner's Association (SLOCCROA), to oversee the first 1.7 miles of Red Mountain Road and implement the Conditions of Approval.

In 2003, the Planning Commission approved a Development Plan application (D000263D) applied for by the property owners association to modify the Conditions of Approval to release a parcel from both associations because a landslide in 2000 prevented the landowner from accessing Red Mountain Road and he had previously developed a more direct access road from the west to Van Gordon Creek Road. The Conditions of Approval for Development Plan D870020D were amended (by D000263D) to reflect this change.

In 2010, Tim and Linda Winsor submitted a Development Plan request (DRC2008-00005) to modify the Development Plan D870020D Conditions of Approval to release their property from San Luis Obispo County Cambria Ranch Owners Association (SLOCCROA) since they had merged this parcel with an adjoining rangeland parcel. At the October 28, 2010 hearing on this previous Development Plan, a number of issues were brought to light and discussed, including the focus of the request on release from SLOCCROA. It became apparent that their original request should have been more properly focused on removing the property from the original Development Plan altogether. Another issue discussed at the hearing was a lawsuit brought against the Winsors (by previous Cambria Ranch Road Association Board members Hilda Leslie, past president, and Barbara Day, past secretary) in an effort to force the Winsors to pay road maintenance fees for the subject property.

After lengthy testimony and discussion, the Planning Commission denied Development Plan DRC2008-00005 in part due to these unresolved issues. This action was appealed by the Winsors and was heading to a Board of Supervisors appeal hearing when the Winsors withdrew the application. They decided to re-focus their request and apply for a new Development Plan.

The current request focuses on the removal of the property from the Development Plan altogether instead of just requesting release from SLOCCROA as they had previously proposed. The Winsors indicated to staff and the Planning Commission that the lawsuit was settled and they were released from having to pay road maintenance dues to CRRA.

Current Request

The applicant is requesting that a portion of his undeveloped rangeland property—once a separate legal parcel and now merged with a larger adjacent parcel—no longer be subject to the Cambria Ranch Road Development Plan D870020D and its Conditions of Approval since there is no plan to develop the portion of the merged parcel located within Cambria Ranch. Access rights to Red Mountain Road have already been relinquished and the property would no longer be subject to any of the Conditions of Approval. The applicant offers as the basis for this request the following:

- The subject property has never been developed for rural residential purposes as was assumed when the original development plan was approved.
- The Winsors do not use the roads within the Cambria Ranch development for residential access to this property.
- The subject property has been merged with a large parcel east of and outside the Cambria Ranch development owned by the applicant and used for grazing cattle.
- The property was placed in a Land Conservation Contract under the Williamson Act program.
- The Access easement was deeded back to the adjacent landowners and the right of access to the roads within the Cambria Ranch development has been legally relinquished.
- The Winsors gave up the right to sell the subject property as a separate legal parcel when they merged the property with the adjacent rangeland parcel.
- An alternative access route exists (both physical and legal) for the merged parcel through the San Simeon Creek Ranch Road Association.
- The Winsors pay road maintenance to the San Simeon Creek Ranch Road Association on a regular basis.

Funding Cambria Ranch Road Maintenance

When rural subdivisions are approved, or as in this case, when a discretionary approval is required to approve a rural road serving multiple existing parcels, the county typically requires that an organization be formed to provide for ongoing private road maintenance. Formation of a property owners association is required in the conditions of approval and responsibilities are assigned for road maintenance and other requirements as may be needed to serve the rural residents.

There was a concern in this area about potential landslides since much of the area is in a geologic study area combining designation. While it is not possible to determine the probability of a major landslide on Red Mountain Road, we do know is that no major landslides have occurred along the roadway in the years preceding improvement of the road and no major landslides have occurred since the road was constructed some 20 years ago. It should be noted that a Final Environmental Impact Report was certified for the original Development Plan (D870020D), the geologic issues were thoroughly evaluated and mitigation measures were proposed at that time, one of which was a \$50,000 contingency fund for road maintenance. Currently Red Mountain Road is regularly maintained and staff is not aware of any major maintenance problems to date, although regular maintenance is necessary.

The implications of a major landslide are primarily monetary, the larger the failure the greater the expense for the associated repairs. The more land owners that are required to contribute, the greater the ability to spread the costs of the repair.

Appeal of Planning Commission Approval

On July 26, 2012, the Planning Commission approved the Development Plan/Coastal Development Permit, effectively removing the subject property belonging to Tim Winsor from the original Development Plan D870020D. Neighbors Hilda C. Leslie and Curtis Leslie, appealed the Planning Commission's decision on August 9, 2012. The appeal is based on the following issues and concerns presented in the attachment to the appeal and summarized below:

Appeal Issue 1 – Proper form for timely filing of appeal. The appellants expressed concern about which appeal form to use in regards to a timely filing of an appeal.

Staff Response: It was determined by staff in August 2012 when the appeal was submitted that the appellants had successfully filed the appeal in a timely manner.

Appeal Issue 2 – Appellants' concern that inadequate time was allowed to present the appellants' position opposing the release of the Winsor's property from the Development Plan at the Planning Commission hearing.

Staff Response: The appellants submitted written comments in advance of the hearing which were available to decision makers and entered into the public record. The appellants were also given the opportunity to provide verbal testimony at the public hearing and were given the time customarily allowed to speakers at Planning Commission hearings. As a result, the appellants were given adequate time to present their position and be meaningfully involved in the process before the Planning Commission.

Appeal Issue 3 – The appellants state that the staff report was based on inaccurate, somewhat misleading testimony, hearsay and speculation and was not supported by facts.

Staff Response: At the time of writing of this staff report the appellants have yet to provide written materials indicating what inaccuracies were present in the Planning Commission staff report.

Appeal Issue 4 – The appellants state that the applicant was given more time by County staff prior to the hearing and the appellants indicate that they was not given the same consideration.

Staff Response: The appellants did not request to meet with the project manager for this Development Plan prior to the hearing on July 26, 2012. However, the appellant Curtis Leslie, was in communication with other staff members regarding land use matters on other properties in the area and may have requested meeting time with them on those issues at that time. Staff from the Current Planning section

did meet with the appellant and other property owners in the area previously regarding a prior Development Plan application (DRC20008-00005) involving a similar request by the Winsors. On January 25, 2013, Curtis Leslie met with staff to discuss their concerns and review this Development Plan and previous Development Plan files.

Appeal Issue 5 – The appellants indicate that as members of the property owners association affected by this request they were entitled to “equal protection under the law” and this matter was brought to the attention of county staff six years ago.

Staff Response: The issues and concerns associated with the Development Plan request were in fact presented at the public hearing and duly considered by the Planning Commission. The appellants had the same access to the Development Plan review process as other surrounding landowners and interested parties, and exercised their right to appear and provide testimony at the public hearing. For a number of years the appellants have been in disagreement with the applicant over his desire to remove part of his property from the Development Plan since the Winsors retired their easement and right to access the primary access road, Red Mountain Road.

Appeal Issue 6 – The appellants believe that the Development Plan/Coastal Development Permit is appealable to the Coastal Commission and indicated that additional information would be forthcoming regarding this point.

Staff Response: When the application was submitted, staff reviewed the Development Plan request in respect to Coastal Commission notice, hearing and appeal procedures and determined that the request was not appealable to the Coastal Commission, because the Development Plan did not fall under the list of appealable items under Section 23.01.043c of the Coastal Zone Land Use Ordinance. Neither the applicant nor any other interested person challenged the Planning Director's determination that the development was non-appealable. However, should your Board approve the Development Plan request, a “Notice of Final Action” will be sent to the Coastal Commission and if they determine that the request is appealable, they may proceed with their usual procedures including a determination of whether there is a substantial coastal act issue. The appellants may also contact the Coastal Commission and request review and determination regarding appealable status. At the time of writing of this report, no additional information has been submitted by the appellants substantiating Coastal Commission appeal status.

Additional Correspondence from Appellants dated 1/21/13 - The appellants indicate that their neighbor has undertaken road improvements on his property and believe that this will result in an additional request to remove property from the property owners association. In addition, the appellants provided letters from a previous staff planner indicating that the original Development Plan would need to be amended to allow a future property owner to remove land from the association.

Staff Response: The appellants' neighbor, Mr. Robinson, indicated to staff (Terry Wahler) at a meeting in January of this year that he does not intend to remove property from the association or the Development plan. The letters from Martha Neder are consistent with what staff has been telling Cambria Ranch property owners, changes to the original Development Plan are required if property owners wish to change the Conditions of Approval or remove property from the development plan. The current Development Plan request by Mr. Winsor is following the correct process to amend the original Development Plan.

OTHER AGENCY INVOLVEMENT/IMPACT

The project was referred to: Public Works and CAL FIRE. No agency concerns were raised. County Counsel reviewed and approved the Resolution as to form and content.

FINANCIAL CONSIDERATIONS

The appeal fee collected partially covers the cost of reviewing the appeal; the balance comes from the Department's general fund. The fee was not waived for the appeal of this project in the Coastal Zone as the appeal issues did not qualify for waiver pursuant to the Coastal Zone Land Use Ordinance.

RESULTS

Denial of the appeal would mean the application for Development Plan/Coastal Development Permit DRC2011-00043 would be conditionally approved and subject to the Conditions of Approval as revised by your Board. Approval of the appeal would mean the application for Development Plan/Coastal Development Permit DRC2011-00043 would be denied, and the subject property would remain subject to the original Development Plan (D870020D).

ATTACHMENTS

1. Appeal Form and Appellants' Letter
2. Board of Supervisors Resolution, Findings and Conditions Affirming the Planning Commission's Decision
3. Appeal Correspondence
4. Planning Commission Notice of Final Action
5. Planning Commission Minutes from the July 26, 2012 Meeting
6. Planning Commission Staff Report packet
7. Additional correspondence submitted at or before the July 26, 2012 Planning Commission hearing